

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GEORGE WEATHERS-PAUL BORDEN,

Defendant-Appellant.

UNPUBLISHED

December 23, 2008

No. 281546

Berrien Circuit Court

LC No. 2006-412906-FC

Before: Murray, P.J., and Markey and Wilder, JJ.

PER CURIAM.

Defendant appeals by right his sentence of 15 to 30 years' imprisonment for assault with intent to murder, MCL 750.83. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

William Ditz, the victim, and Kristen Thain went to a bar, and there they joined Monica Holloway. At one point, defendant followed Thain to the jukebox, and then began to follow Thain and Holloway as the women left the bar to purchase cigarettes. Thain stopped and asked Ditz to accompany them to the parking lot, and the three followed defendant outside. Thain and Holloway left, and Ditz told defendant that the ladies were with him. Defendant turned around, swore at Ditz, and threatened him. Ditz noticed that defendant had something shiny in his hand. Defendant then walked down the street. Thain and Holloway returned approximately ten minutes later and sat with Ditz at the bar. Thain sat approximately 18 inches from Ditz. Defendant returned to the bar, walked up to Ditz and Thain, reached between them, and slashed Ditz in the stomach with a knife. Ditz grabbed Thain and pushed her onto Holloway and away from defendant so the women would not be harmed. Defendant then stabbed Ditz again. Thain and Holloway moved away from the fight. Defendant continued to attack Ditz, who blocked defendant's attempt to cut Ditz's throat with his forearm. Ditz was cut several more times until he apparently managed to fight off defendant. Defendant then left the bar.

On appeal, defendant challenges the trial court's decision to score Offense Variable (OV) 9 (number of victims) at ten points, and argues that he is entitled to resentencing because a proper scoring of zero points for this variable would have changed the guidelines scoring range.

"This Court reviews a sentencing court's scoring decision to determine whether the trial court properly exercised its discretion and whether the record evidence adequately supports a particular score." *People v McLaughlin*, 258 Mich App 635, 671; 672 NW2d 860 (2003). In

scoring a particular offense variable, a trial court's determination need only be supported by a preponderance of the evidence. *People v Drohan*, 475 Mich 140, 142-143; 715 NW2d 778 (2006).

MCL 777.39, which governs the scoring of OV 9, provides in pertinent part that ten points are to be scored when two to nine victims were placed "in danger of physical injury or death" by defendant's actions. The trial court did not err when it decided that such was the case here. A person need not be a named victim to be considered a victim for purposes of scoring this variable. *People v Morson*, 471 Mich 248, 261-262; 685 NW2d 203 (2004). While Thain was not the actual target of defendant's attack, her presence and close proximity support the trial court's finding. She easily could have been injured had defendant missed his attack on Ditz, or if Ditz had not thrown her out of the way to protect her. Ditz's recognition of this danger caused him to expose himself to a second strike by defendant. Defendant's apparent contention that he acted with such surgical precision so as not to pose a danger to anyone other than Ditz is specious, especially since defendant admitted at trial that he was intoxicated when he attacked Ditz.

Affirmed.

/s/ Christopher M. Murray
/s/ Jane E. Markey
/s/ Kurtis T. Wilder